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JAN 17 1996  
Opinion Committee

The Texas Senate  
Economic Development Committee



FILE # ML-38161-96

I.D. # 38161

**RQ-865**

Senator Don Henderson  
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Senator Eddie Lucio  
Senator Frank Madla  
Senator Jerry Patterson  
Senator Florence Shapiro

January 12, 1996

RECEIVED  
JAN 17 1996  
Opinion Committee

The Honorable Dan Morales  
Attorney General of Texas  
P. O. Box 12548  
Austin, Texas 78711

RE: Attorney General's Opinion Concerning the Public  
Utility Regulatory Act of 1995 ("PURA") Sec. 3.251(d)

Dear General Morales:

In my capacity as Chairman of the Senate Economic Development Committee it has come to my attention that San Antonio City Public Service, San Antonio's municipally owned gas and electric utility (collectively referred to as "the City"), has entered into an Agreement for the License of Fiber Optic Facilities and Services with ICG Access Services, Inc. ("ICG"), a telecommunications provider. A copy of that Agreement is attached for your review.

The purpose of this letter is to request on behalf of the Committee that the Attorney General issue a written opinion as to whether the attached Agreement would result in the City directly or indirectly offering for sale telecommunications services to the public in violation of PURA.

As you are aware, a number of substantive amendments to PURA were enacted by the 74th Texas Legislature, including PURA Sec. 3.251(d), which provides as follows:

(d) A municipality may not receive a certificate of convenience and necessity, certificate of operating authority, or service provider certificate of operating authority under this Act. In addition, a municipality or municipal electric system may not offer for sale to the public either directly or indirectly through a telecommunications provider, a service for which a certificate is required or any non-switched telecommunications service to be used to provide connections between customers' premises within the exchange or between a customer's premises and a long distance provider serving the exchange. (Emphasis added.)

The Honorable Dan Morales

January 12, 1996

Page Two

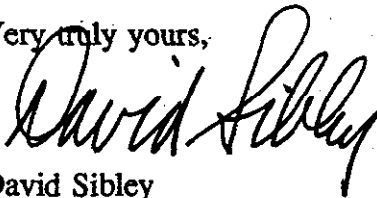
Section 3.251(d) was intended, among other things, to prevent potential harm which the legislature recognized could result from municipalities acting as both competitors and regulators in the telecommunications business.

The attached Agreement provides that the City will construct, own, operate and maintain a fiber optic telecommunications network. The network will be used by the city for its own internal needs, and by ICG for the provision of a full range of telecommunications services to the public. ICG will pay fifty percent of the cost of constructing the network, and will have the right to use fifty percent of its fiber optic capacity for the 25 year term of the Agreement, subject to the City's right to reclaim such capacity when needed by the City. ICG will pay the City a percentage of the revenues which it earns from providing services over the City's fiber optic network. Upon request by the city, ICG will also act as the City's marketing agent for the licensing of any excess "Dark Fiber" on the City's network.

The Agreement essentially results in the City providing telecommunications services directly to ICG, and indirectly through ICG to the public. In my view as a legislative sponsor of the Act, the Agreement between the City and ICG is contrary to both the express terms and the intent of PURA Sec. 3.251(d).

You are hereby requested to provide a written opinion concerning this matter in accordance with the provisions of Sec.402.042 of the Government Code.

Very truly yours,



David Sibley  
Chairman

Enclosure

Copies (without enclosure):

Mayor Bill Thornton, CPS Board Chairman  
Lieutenant Governor Bob Bullock  
Members, Senate Economic Development Committee  
Senator Jeff Wentworth  
Senator Frank L. Madla  
Senator Gregory Luna  
Senator Judith Zaffirini

bc: San Antonio Area House of Representatives Members  
✓ Jose Camacho (with enclosure)  
Bobby Gierisch, Speaker's Office  
Senator Dan Shelley, Governor's Office



# CITY OF SAN ANTONIO

JEFF S. WEBSTER  
COUNCILMAN  
DISTRICT 10

FILE # ML-37743-95

I.D. # 37743

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DEC 15 1995

Opinion Committee

December 12, 1995

The Honorable Dan Morales  
Attorney General  
P.O. Box 12548  
Austin, Texas 78711

Dear Attorney General Morales:

On behalf of the San Antonio City Council, I am requesting a review and legislative analysis of H.B. 2128 as it applies to City Public Service and ICG Access Services Inc.

We have had various interpretations from our local State Representatives and would appreciate an opinion from your office. A response by December 18, 1995 would be appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Jeff Webster".

JEFF S. WEBSTER  
City Councilman  
District 10